Carpenters District Council of Greater St. Louis, AFL–CIO *and* Sheet Metal Workers' International Association, Local 36 and Servco Companies. Case 14–CD–891

November 30, 1994

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS STEPHENS, BROWNING, AND COHEN

The charge in this Section 10(k) proceeding was filed on May 5, 1994,[1] by the Sheet Metal Workers' International Association, Local 36 (Sheet Metal Workers), alleging that the Respondent, Carpenters District Council of Greater St. Louis, AFL–CIO (Carpenters), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Servco Companies (the Employer) to assign certain work to employees it represents rather than to employees represented by the Sheet Metal Workers. A hearing was held on June 8 before Hearing Officer Donald F. Jueneman. Thereafter the Sheet Metal Workers filed a brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Missouri corporation, is engaged in the nonretail manufacture, sale, and installation of commercial kitchen and food service equipment at its facility in St. Louis, Missouri, where it annually purchases and receives, directly from points located outside the State of Missouri, goods valued in excess of $50,000. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Carpenters and Sheet Metal Workers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

General contractor J.S. Alberici, Inc. (Alberici) contracted with Station Casinos, Inc. (Station Casinos) for the construction of a two-deck barge for a riverboat casino gambling operation. Alberici subcontracted with Servco for certain furnishings and installation of kitchen and food service equipment, including the installation of six walk-in coolers. This work was to take place at the Louisiana docks in St. Louis, Missouri. Installation of the first walk-in cooler was scheduled for May 5.

Servco performs walk-in cooler work as part of its national commercial kitchen installation operation. It uses employees represented by the Sheet Metal Workers to perform this work. However, in the St. Louis metropolitan area and surrounding Missouri counties within the jurisdiction of the Carpenters, Servco has subcontracted large restaurant walk-in cooler work to employers whose employees are represented by the Carpenters. Servco did so pursuant to a 1982 jurisdictional agreement between the Carpenters and the Sheet Metal Workers.

On May 3, Earl E. Gates Jr., president of Servco, telephoned Bob Bowling, business representative for the Sheet Metal Workers in St. Louis, in order to verify information Gates had received concerning the demise of the 1982 agreement. Bowling told Gates that the agreement no longer existed and all walk-in cooler work was being done by employees represented by the Sheet Metal Workers. Servco then assigned the disputed work to its employees represented by the Sheet Metal Workers. Servco has no contract with the Carpenters and is not obligated by its contract with Alberici to assign any of the disputed work to employees represented by the Carpenters.

Later that morning, Tim Hildebrandt, business representative for the Carpenters, telephoned Gates to tell Gates that he was aware of the impending delivery of walk-in coolers and that their installation was work belonging to employees represented by the Carpenters. Gates advised Hildebrandt of his conversation with Bowling and told Hildebrandt that he had assigned the disputed work to his own employees represented by the Sheet Metal Workers. Hildebrandt repeated that the work belonged to employees represented by the Carpenters and that the Carpenters would not yield on this.

On the next day, May 4, Bob Pape, jurisdictional representative for the Carpenters, telephoned Gates and reiterated that the work belonged to employees represented by the Carpenters and that the Carpenters was not going to give up the work. Pape said that he ''would do what he had to do.''

On May 5, Servco's truck with the cooler arrived at the worksite. Before unloading began, Carpenters Representative Hildebrandt began picketing. He wore a sign stating that Servco did not have a contract with the Carpenters and he carried an umbrella that identified the Carpenters. About 50 or 60 employees working on the barge left work and waited on the dock. Thereafter General Contractor Alberici's representatives ordered that the truck be removed from the area. The picketing then ceased and the employees returned to work.

[1] All dates are in 1994 unless otherwise specified. An amended charge was filed on May 10.

On May 11, Servco again attempted to deliver walk-in cooler parts. Alberici's Greg Foushner told Gates that Hildebrandt was at the worksite and would throw up a picket if Servco attempted to unload the walk-in cooler parts. Alberici therefore refused to allow Servco to make the delivery. As of the date of the hearing, the disputed work was still incomplete.

B. *Work in Dispute*

The disputed work involves installing walk-in coolers on a two-deck barge being constructed for Station Casinos at the Louisiana docks in St. Louis, Missouri.

C. *Contentions of the Parties*

Servco contends that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated, that it properly assigned the disputed work to its employees represented by the Sheet Metal Workers, that its contract with the Sheet Metal Workers encompasses the work in question, and that it is more economical and efficient to have its employees represented by the Sheet Metal Workers perform the disputed work.

The Sheet Metal Workers contend that the disputed work has been properly assigned to the employees it represents pursuant to the terms of its labor agreement with Servco, that employees it represents possess the skills and abilities to perform the work, and that it is more efficient and economical for Servco to have employees represented by the Sheet Metal Workers perform the work. The Sheet Metal Workers also contend that the practice in the St. Louis metropolitan area is mixed with employees represented by the Carpenters installing nonfast food restaurant walk-in coolers but employees represented by the Sheet Metal Workers installing fast food restaurant walk-in coolers. Moreover, employees represented by the Sheet Metal Workers perform the disputed work for Servco in all other areas of the country.

The Carpenters contend that there is a clear and unmixed practice in the St. Louis metropolitan area for employees represented by Carpenters to perform the disputed work pursuant to the 1982 jurisdictional agreement between the Carpenters and Sheet Metal Workers.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated and that the parties have not agreed on a method for a voluntary adjustment of the dispute. As discussed above, Hildebrandt and Pape told Servco that the disputed work belonged to employees represented by the Carpenters and the Carpenters would not yield and would ''do what we have to do.'' The next day Hildebrandt picketed the jobsite, and employees on the barge engaged in a work stoppage that, along with the picketing, lasted until Alberici denied Servco permission to deliver walk-in cooler components to the jobsite. A few days later Alberici refused to let Servco make another delivery to preclude Hildebrandt from resuming the picketing. Finally, the parties stipulated that there is no voluntary method of resolving jurisdictional disputes which would be binding on all parties.

In light of the foregoing, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-on method for voluntarily adjusting the dispute. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreements

The Sheet Metal Workers' collective-bargaining agreement with Servco runs from May 1, 1992, through April 30, 1996. Its jurisdictional clause specifically encompasses the disputed work:

> Any and all sheet metal work in connection with or incidental to the equipment and operation of kitchens in hotels, restaurants, hospitals, lunch rooms, drug stores, banks, dining cars, public and semi-public buildings, including ranges, canopies, steam tables, work tables, dishwashers, coffee urns, soda fountains, warming closets, sinks, drainboards, garbage chutes, and incinerators, refrigerators and all other sheet metal work including welding and polishing in connection with kitchen equipment or refrigeration plants.

Servco has never had a collective-bargaining agreement with the Carpenters. Accordingly, we find the factor of collective-bargaining agreements tends to favor an award of the disputed work to employees represented by the Sheet Metal Workers.

2. Interunion agreement

John K. Larson and Bob Bowling, business representatives for the Sheet Metal Workers, both testified

that in 1982 the Carpenters and Sheet Metal Workers agreed to a division of walk-in cooler work in the St. Louis area. The Carpenters were given jurisdiction over large restaurants and institutions and the Sheet Metal Workers jurisdiction over fast food chains.[2] However, Larson further testified that Jim Rudolph, jurisdictional representative for the Carpenters, told him that the Carpenters would no longer abide by the 1982 agreement and that the Carpenters preferred to negotiate on a job-to-job basis. He also testified that he saw a copy of a letter that the Carpenters sent to the Sheet Metal Workers repudiating the 1982 agreement. Bowling further testified that when a conflict arose over work at the Laclede Oaks Retirement Center on December 8, 1992, he telephoned Rudolph and Rudolph told him that the Carpenters were no longer going to abide by the 1982 agreement. Bowling also testified that subsequently a similar conflict arose with the Postal Credit Union job at Lindbergh and I-55 and Rudolph again told him that the Carpenters were not abiding by the 1982 agreement. Finally, Larson testified that representatives for the two unions met on three occasions in 1993 to try to settle their jurisdictional differences without success.

The Board has not assigned significant weight to interunion agreements where all the parties have not agreed to abide by them.[3] Both the record evidence and the current dispute show that neither the Sheet Metal Workers nor the Carpenters adhere to the 1982 agreement. Accordingly, we give no weight to this factor.

3. Company preference and past practice

Servco prefers to assign the disputed work to its employees represented by the Sheet Metal Workers. Servco does not have any employees represented by the Carpenters. Servco has always used its own employees represented by the Sheet Metal Workers to perform all its sheet metal work. Servco subcontracted only limited work to employers of employees represented by the Carpenters pursuant to the 1982 agreement. Gates testified that of the 21 walk-in cooler installations that Servco had performed in the 3 years preceding June, only five were performed in the St. Louis area. Moreover, two of the five were performed by Servco's own employees represented by the Sheet Metal Workers. These same employees performed some work even on the other three jobs where Servco subcontracted to employers whose employees were represented by the Carpenters pursuant to the 1982 agreement.

We therefore find that this factor favors an award of the work in dispute to employees represented by the Sheet Metal Workers.

4. Area and industry practice

The record shows that Servco's employees represented by the Sheet Metal Workers perform the disputed work nationally. However, in the St. Louis area, there is a recent history of mixed practice. Employees represented by the Carpenters have installed walk-in coolers at large institutions and restaurants like the Station Casinos job at issue here. However, employees represented by the Sheet Metal Workers have done this work at fast food restaurants.

Accordingly, we find that this factor does not favor awarding the work to either group of employees.

5. Relative skills

Gates testified that there was little difference in quality between the work performed by Servco's own employees represented by the Sheet Metal Workers and by subcontractors' employees represented by the Carpenters.

We find that this factor favors awarding the work to neither group of employees.

6. Economy and efficiency of operation

Gates testified that Servco's employees represented by the Sheet Metal Workers install walk-in coolers all over the country and are experienced in all facets of sheet metal work. Gates noted that by installing commercial kitchens nationally, Servco's employees have years of experience, have corrected errors, and have learned to ''work smarter.'' Gates testified that Servco finds it economical to use its own employees for warranty work thereby enhancing work continuity. Gates also testified that it took 50 to 100 percent longer for employees represented by the Carpenters to do the work because they did not do this sort of work regularly as Servco's own employees did. Finally, Gates noted that it was more profitable for Servco to use its own employees for all walk-in cooler work because subcontracting increased Servco's costs.

Accordingly, we find that the factor of economy and efficiency of operation favors awarding the work in dispute to employees represented by the Sheet Metal Workers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Sheet Metal

[2] The agreement cites 36 types of work and says specifically about walk-in coolers:

> *Walk-in Coolers*—Walk-in coolers in conjunction with kitchen equipment (fast food chains only—such as Burger Chef, Burger King, Wendy's, Taco Bell, etc.) to be the work of the Sheet Metal Workers, if in Sheet Metal contractor's contract. Large field assembled coolers such as those fabricated by Hussman not claimed by Sheet Metal Workers. (Institutions such as hospitals and large restaurants).

[3] *Sheet Metal Workers Local 9 (J. A. Jones Construction Co.)*, 267 NLRB 22, 25 (1983).

Workers are entitled to perform the work in dispute. We reach this conclusion relying on the collective-bargaining agreement between Servco and the Sheet Metal Workers, the Employer's preference and past practice, and economy and efficiency of operation. In making this determination, we are awarding the work to employees represented by the Sheet Metal Workers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Servco Companies represented by Sheet Metal Workers' International Association, Local 36 are entitled to perform the installation of walk-in coolers on a two-deck barge being constructed for Station Casinos, Inc., at the Louisiana docks in St. Louis, Missouri.

2. Carpenters District Council of Greater St. Louis, AFL–CIO, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Servco Companies to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Carpenters District Council of Greater St. Louis, AFL–CIO shall notify the Regional Director for Region 14 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.